

McElwain's story and the bulk of whom (except the former fired associates themselves) came forward to deny Ms. McElwain's allegations, the conclusion that the Bureau's position was not substantially justified, is manifest. The Presiding Officer should so rule.

**IV. Ms. Crane and Mr. Pascal have  
adequately documented their expenses.**

27. Finally, the Bureau has several quibbles and one valid point with respect to the compilation of expenses incurred by Ms. Crane and Mr. Pascal. That one valid point is that the EAJA Application apparently inadvertently failed to include the September statement for Mr. Pascal. To remedy that problem, the September statement is attached.<sup>16/</sup>

28. As to the Bureau's various quibbles, the Bureau first complains that the statement of expenses and fees provided fails to take it through the arithmetic it can "assess these claims adequately." There is no requirement to provide calculations. All the raw data are provided so that the Bureau could verify the amounts claimed. For example, Lukas McGowan provided a summary sheet which indicated that 138.90 hours of total attorney of time were billed to Ms. Crane and Mr. Pascal. At \$75 per hour that amounted to \$10,417 of attorney time, plus \$423.50 of paralegal time and plus \$2,249.62 of expenses, for a grand total of 13,090.12. Since the EAJA application actually stated the amount

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<sup>16/</sup> To the extent the Bureau has comments addressed solely to this matter, and does not attempt to use it as a ruse to respond to this reply, Ms. Crane and Mr. Pascal would have no objection to its submission of a response to the statement.

claimed as \$12,544.62, Ms. Crane and Mr. Pascal thank the Bureau for making its counsel check its math. Hourly amounts are also provided for Mr. Barab's firm, allowing the Bureau to perform a similar calculation, if it had desired.

29. Next, the Bureau is reduced to looking for disparities between the amounts billed for telephone calls between undersigned counsel and Mr. Barab. All that is shown by the Bureau's exercise is that sometimes undersigned counsel did not bill for telephone calls to Mr. Barab and that other times, Mr. Barab may not have billed such calls. Counsel for the Bureau is more than capable of conducting a realistic, rather than nit-picking, analysis of this firm's and Mr. Barab's billings. If he has a real concern with respect to those statements, undersigned counsel will be more than happy to respond to them.

30. Third, the Bureau contests the upward revision of the \$75 rate to account for inflation, asserting that Rule Section 1.1507 allows for only the prospective increase of fees in response to changes in the cost of living. We agree that Section 1.1507 states what the Bureau says it does. Having said that, however, this provision is arbitrary and capricious, and an abuse of the Commission's discretion, because the practical result is to deny an increase to those deserving of an increase in the hourly rate. What Congress intended in setting the provision for increases in the EAJA base rate based on increases in the cost of living was to require to the Commission to provide an effective mechanism for meritorious requests for such an increase to be

granted, not to require that a separate rulemaking be instituted prospectively only to justify a fee in excess of the \$75 per hour limit.<sup>17/</sup>

V. Conclusion.

31. In defending themselves in this proceeding, Mr. Pascal and Ms. Crane incurred fees and expenses in the amount of \$26,860.85 from the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, and Ms. Crane incurred \$14,322.87 from the law firm of Barab and Hart.

32. As shown in the EAJA Application and herein, Ms. Crane and Mr. Pascal substantially prevailed in this case. Moreover, the Bureau has failed to show that its position in this litigation was substantially justified. Indeed, critical review of the record in this proceeding indicates that the Bureau pressed for revocation of the licenses of Ms. Crane and Mr. Pascal without any substantial evidence that they acted with fraudulent intent. In a very real sense the Bureau litigated this case in reliance on supposition rather than evidence. The very purpose of the EAJA was to require the government to have a substantial case before it tasks itself on its citizens. In this proceeding, the Bureau lacked any such substantial justification for its action. As such an award under the EAJA is appropriate

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<sup>17/</sup> Although Ms. Crane and Mr. Pascal readily understand that the Presiding Officer may determine that this question is one requiring action of the full Commission, it is presented here to ensure that no claim is raised that Ms. Crane and Mr. Pascal have not exhausted their administrative remedies.

and necessary to redress the unfairness perpetrated on Ms. Crane and Mr. Pascal.

Respectfully submitted,

CHARLES P. PASCAL

SANDRA V. CRANE

By 

George L. Lyon, Jr.  
Marjorie K. Conner  
Their Counsel

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(202) 857-3500

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December 21, 1992

Lukas, McGowan, Nace & Gutierrez, Chartered  
1819 H Street, N.W., 7th Floor  
Washington, D.C. 20006  
(202) 857-3500

October 7, 1992

Billed through 09/30/92

Bill number 285-00000-022 GL

Mr. Charles P. Pascal  
829 Lyell Way  
Gardnerville, NV 89410

Balance forward as of bill number 019 dated 09/10/92

\$ 1,349.63

FOR PROFESSIONAL SERVICES RENDERED

09/01/92 GL	Prepare Hearing Exhibits	10.00	hrs	1,950.00
09/02/92 GL	Prepare hearing	6.00	hrs	1,170.00
09/03/92 GL	Prepare hearing exhibits	4.00	hrs	780.00
09/04/92 GL	Prepare hearing materials	1.00	hrs	195.00
09/07/92 GL	Prepare hearing materials	3.00	hrs	585.00
09/08/92 RC	FCC Filing	.10	hrs	4.50
09/08/92 RC	Hand Delivery to FCC - 2025 M St., Rm. 5331	.10	hrs	4.50
09/08/92 RC	Hand Delivery to FCC - 2000 L St.	.30	hrs	13.50
09/09/92 GL	Prepare supplement to direct care	.40	hrs	78.00
09/09/92 RC	FCC Filing	.10	hrs	4.50
09/09/92 RC	Hand Delivery to FCC - 1919 M St. Rm. 632	.10	hrs	4.50
09/09/92 RC	Hand Delivery to FCC - 2025 M St.	.10	hrs	4.50
09/09/92 RC	Hand Delivery to FCC - 2000 L Street	.30	hrs	13.50
09/10/92 GL	Telephone conference with C. Pascal	.70	hrs	136.50
09/10/92 GL	Letter to C. Pascal re supplement to directive	.20	hrs	39.00
09/10/92 GL	Letter to S. Crane	.20	hrs	39.00
09/10/92 GL	Telephone conference with M. Barab	.30	hrs	58.50
09/11/92 GL	Letter to S. Crane	.20	hrs	39.00
09/11/92 GL	Letter to C. Pascal	.20	hrs	39.00
09/14/92 GL	Telephone conference with T. Fitz Gibbon	.20	hrs	39.00
09/14/92 GL	Telephone conference with T. Fitz Gibbon/J. Chachkin re hearing	.30	hrs	58.50

09/14/92 GL	Review re Morse and Maia deposition	.30 hrs	58.50
09/15/92 GL	Memorandum to Chris Imlay	1.00 hrs	195.00
09/15/92 GL	Prepare hearing	3.00 hrs	585.00
09/15/92 GL	Prepare Motion to Supress McElwain's testimony	4.00 hrs	780.00
09/17/92 GL	Telephone conference with S. Crane	.50 hrs	97.50
09/17/92 GL	Telephone conference with C. Pascal	.40 hrs	78.00
09/17/92 GL	Telephone conference with Fitz Gibbon	.30 hrs	58.50
09/17/92 GL	Prepare prehearing conference	2.00 hrs	390.00
09/18/92 GL	Letter <del>to</del> hearing	4.00 hrs	780.00
09/18/92 GL	Telephone conference with C. Pascal	.50 hrs	97.50
09/18/92 GL	Telephone conference with C. Pascal	.30 hrs	58.50
09/18/92 GL	Telephone conference with T. Fitz Gibbon	.30 hrs	58.50
09/18/92 GL	Prepare hearing	1.00 hrs	195.00
09/21/92 JL	Telephone conference with S. Crane and C. Pascal	.70 hrs	101.50
09/21/92 GL	Prepare hearing	2.00 hrs	390.00
09/22/92 GL	Telephone conference with C. Pascal	.20 hrs	39.00
09/22/92 GL	Prepare hearing	1.00 hrs	195.00
09/22/92 GL	Telephone conference with T. Fakehany	.30 hrs	58.50
09/22/92 GL	Prepare Hearing	3.00 hrs	585.00
09/23/92 MG	Attend prehearing conference	3.00 hrs	450.00
09/23/92 MC	Research re propriety of recording class lecture w/o teacher's con- sent	3.00 hrs	360.00
09/23/92 MC	Research and phone call re D. Morse's flying lessons	1.00 hrs	120.00
09/23/92 MC	Attend prehearing conference	2.00 hrs	240.00
09/23/92 GL	Attend hearing	7.00 hrs	1,365.00
09/24/92 GL	Attend hearing	4.00 hrs	780.00
09/24/92 GL	Telephone conference with C. Imlay	.30 hrs	.00
09/24/92 GL	Telephone conference with clients	.50 hrs	97.50
09/24/92 GL	Telephone conference with M. Barab	.20 hrs	39.00
09/24/92 MC	Research and preparation re declaration re D. Morse pilot license	1.00 hrs	120.00
09/24/92 MC	Attend hearing	1.50 hrs	180.00
09/25/92 GL	Review re settlement and various calls to Private Radio Bureau	1.00 hrs	195.00
09/30/92 GL	Credit adjustment per G. Lyon; 1/2 total fees is transferred to Client #285A (Sandra V. Crane).	.00 hrs	7,001.75-

Total fees for this matter

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\$ 7,001.75

Mr. Charles P. Pascal  
Bill number 285-00000-022 GL

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DISBURSEMENTS

09/30/92	About this bill: adjustment per G. Lyon; 1/2 total expense is transferred to Client #285A.	415.29-
09/30/92	Long Distance	14.03
09/30/92	Postage	27.60
09/30/92	Xerox	550.70
09/30/92	Federal Express	238.25
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	Total disbursements for this matter	\$ 415.29

BILLING SUMMARY

TOTAL FEES	\$ 7,001.75
TOTAL DISBURSEMENTS	\$ 415.29
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TOTAL CHARGES FOR THIS BILL	\$ 7,417.04
NET BALANCE FORWARD	\$ 1,349.63
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TOTAL BALANCE NOW DUE	\$ 8,766.67

Payment is requested within 30 days of invoice date.  
Please indicate account number(s) with payments.

Thank You!

**CERTIFICATE OF SERVICE**

I, Lydia N. Hicks, Secretary, at the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, certify that true copies of the foregoing document were sent this 21st day of December 1992, via first class mail, postage prepaid to the following:

Honorable Joseph Chachkin  
Office of Administrative Law Judges  
Federal Communications Commission  
2000 L Street, NW, Room 226  
Washington, DC 20554

Thomas D. Fitz Gibbon  
Eric J. Malinen  
Private Radio Bureau  
Federal Communications Commission  
Room 5331, 2025 M Street, NW  
Washington, DC 20554

Martin J. Barab, Esquire  
9606 Santa Monica Boulevard  
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Beverly Hills, CA 90210

  
Lydia N. Hicks